



***Submission to
Senate Rural and Regional Affairs and Transport
Legislation Committee***

***Re
Coastal Trading (Revitalising Australian Shipping)
Amendment Bill 2017 [Provisions]***

***On behalf of

North Star Cruises Australia***

***Owners and operators of the Australian registered cruise ship
“True North”***



NORTH STAR CRUISES AUSTRALIA
PO Box 654 Broome Western Australia 6725
Telephone: (+61 8) 9192 1829, Facsimile: (+61 8) 9192 1830
Email: cruise@northstarcruises.com.au URL: www.NorthStarCruises.com.au

North Star Cruises Australia (NSCA) has been operating its own expedition cruise ships, primarily in the North West coastal region of Western Australia, since 1987. NSCA were pioneers in opening up the North West Australian (Kimberley) area to expedition cruises. Since 1987 NSCA has worked closely with various state government departments to ensure the pristine cultural and environment coastal areas are respected and safeguarded.

Since NSCA commenced expedition cruises on the Kimberley coast in 1987 up until today, it has had a solid, well-structured vessel replacement programme commissioning 5 new Australian built vessels over the period, increasing passenger capacity from 6 in 1987, to 36 today. Increasing annual Kimberley cruises from 4 in 1987 to 19 in 2017. That's an increase in passenger cruise / capacity from 24 in 1987 to 684 today. Over the same period NSCA has increased its permanent Australian workforce from 3 to 55.

The discussions between North Star Cruises Australia (and other Australian flagged and Australian manned operators offering expedition cruises along the North West Kimberley coast) and The Department of Infrastructure and Transport, about proposed changes to the Navigation Act, has been ongoing since 2006.

We have consistently asked that the legislation separate coastal passenger shipping from coastal cargo/freight shipping and apply specific legislation regulations to each. However, unfortunately, the current Amendment Bill before parliament still incorporates both (distinctly different) types of shipping, with both being identically covered by the same regulations.

Unfortunately, with the demise of the governments last attempt in 2015, to allow all foreign owned and crewed ships unfettered access to trade in Australian coastal waters. It is apparent this government is again determined to "kill off" the remaining Australian owned, operated and Australian crewed coastal shipping enterprises.

It is also apparent that the authors of the previous 2015 attempt to do this, have again had a significant input into the current Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 [Provisions]. Trying this time, to disguise these Amendments, as simply removing “Red Tape”.

This became very apparent in the early stages of the Ministers “consultation” process, (pre-release of his discussion paper), by his **exclusion** in the “consultations”, of a key component of the Australian coastal trading industry - that of the actual Australian owners who operate Australian owned and crewed passenger vessels in the Australian coastal trade. He did however take advice from representatives of foreign owned vessel operators.

Keeping in mind, the original intent of the Coastal Trading (Revitalising Australian Shipping) Act 2012 was to allow foreign ships to carry cargo (and passengers) when there is “actual” cargo (or passengers) waiting to be shipped and an Australian registered vessel was unavailable to do so. However, with the introduction of the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 [Provisions], it appears this government (and the department) is intent on overseeing the complete demise of the existing Australian owned, operated and Australian crewed coastal fleet, at the behest of all foreign comers.

Attached to this submission is a copy of the proposed Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 [Provisions], on which are our comments against those sections which we feel should be changed or omitted. Below are the explanations of our comments.

Please keep in mind, by the departments own research (and advice) in 2015, the only way Australian owned ships could compete with foreign ships on the Australian coastal trade, would be to sack its Australian crews and hire foreign crews. And to do that, the Australian vessels would have to be removed from the Australian Shipping Register, and registered in a country of convenience.

Schedule 1—Main amendments

Item 5 – *Subsection 6(1) (paragraph (b) (of the definition of acceptable tolerance limits)*

This amendment would allow foreign applicants for temporary licences to apply for a greater number of licences and then only operate when they have “SOLD” passenger places in their vessel.
e.g.

- A foreign small cruise vessel could apply for 100 temporary passenger voyage licenses to cruise Sydney Harbour (or the Great Barrier Reef, or the Kimberley's) . Then park their vessel at the relevant jetty and sell their product using the foreign vessel with foreign crews. Competing directly with an existing Australian owned, operated and crewed vessel. By doing this the foreign vessel temporary licence holder would not be in breach of the licence because of section 5 (b) :-

in relation to passengers authorised to be carried on a vessel under a temporary licence—not more than 200% more, or 100% less, of the number of passengers authorised to be carried under the licence;

Item 6 – *Subsection 6(1) (paragraph (c) of the definition of acceptable tolerance limits)*

- Again this opens up the foreign temporary licence holder to manipulate the terms of the temporary licence to the detriment of the Australian owned, operated and crewed vessels.

Item 7 – Subsection 6(1) (ii)

- By allowing a vessel to stay in Australian waters without a defined reason allows a foreign vessel to stay alongside any jetty in any port in Australia, sell their product (against Australian owned, operated and crewed vessel) and then apply and receive a temporary licence. This would allow foreign ships greater opportunity to “cherry pick” the Australian coastal cruise market.

Item 15 6(1) (*definition of voyage*)

- By removing “from one port to another”, this amendment, when incorporated with the amendments above, would allow foreign vessels unlimited access to voyages and compete directly with Australian owned, operated and crewed passenger vessels, such as Sydney Harbour Cruises, Great Barrier Reef Cruises and Kimberley Cruises, and all other existing Australian owned and operated cruises around the Australian coastline. (You don’t load cargo on a ship and go on a voyage and bring the cargo back to the same port). This amendment is only of benefit to foreign passenger vessels who wish to compete directly with Australian owned, operated and crewed passenger vessels.

Item 40 – *Subsection 43 (3)*

- Other than an application relating to an energy security situation, Section 61 should remain. Otherwise, again, with the before mentioned amendments, this change would enhance the opportunity for foreign passenger vessels to take over from existing Australian owned, operated and crewed passenger vessels.

Item 45 - *Subdivision D of Division 2 of Part 4*

- This should remain, it is an integral part of the “Coastal Trading (Revitalising Australian Shipping) Act 2012”

Item 59 - *Subsection 77(4)*

- The current legislation provides that The Minister must decide an application for variation of a temporary licence within 7 business days after the day the variation application is made.
The suggested amendment changes the 7 business days to 2 business days. The shorter response time will likely result in the Minister not meeting the shorter response time and therefore the application to vary a temporary licence will be granted by default as per section 56. It also effectively removes Australian owned vessels from being able to object to the variation.

Attached to this submission is :-

- A “reviewed” copy of the Coastal Trading Amendment Bill 2017

The writer would be pleased to attend the Senate Committee on the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 [Provisions], to elaborate on the submission, as well as answer any questions the committee may have.

Yours Faithfully

Bill Milby
Owners Representative
North Star Cruises Australia Pty Ltd
10 November 2017

2016-2017

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017

No. , 2017

(Infrastructure and Regional Development)

**A Bill for an Act to amend the *Coastal Trading
(Revitalising Australian Shipping) Act 2012*, and for
related purposes**

Contents

1	Short title	1
2	Commencement	1
3	Schedules	2
Schedule 1—Main amendments		3
	<i>Coastal Trading (Revitalising Australian Shipping) Act 2012</i>	3
Schedule 2—Consequential amendments		14
	<i>Occupational Health and Safety (Maritime Industry) Act 1993</i>	14
	<i>Seafarers Rehabilitation and Compensation Act 1992</i>	14

1 ***A Bill for an Act to amend the Coastal Trading***
2 ***(Revitalising Australian Shipping) Act 2012, and for***
3 ***related purposes***

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Coastal Trading (Revitalising Australian Shipping)*
7 *Amendment Act 2017*.

8 **2 Commencement**

- 9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

1

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

2

3

4

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

5

6

7

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

8

3 Schedules

9

10

11

12

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

2

Schedule 1—Main amendments

Coastal Trading (Revitalising Australian Shipping) Act 2012

1 Paragraph 3(2)(b)

Omit “licence;”, substitute “licence.”.

2 Paragraph 3(2)(c)

Repeal the paragraph.

3 Section 5

Omit:

- This Act regulates coastal trading by providing for licences to be granted that authorise vessels to carry passengers or cargo between ports in Australia. Using a vessel to engage in coastal trading without a licence may lead to a pecuniary penalty being imposed for the contravention of a civil penalty provision.

substitute:

- This Act regulates coastal trading by providing for licences to be granted that authorise vessels to carry passengers or cargo between ports in Australia or for vessels to carry liquid fuel products from offshore facilities to ports in Australia. Using a vessel to engage in coastal trading without a licence may lead to a pecuniary penalty being imposed for the contravention of a civil penalty provision.

4 Section 5

Omit:

- Part 4 sets out the 3 kinds of licences (general licences, temporary licences and emergency licences) that may be granted and the application process for each. It also deals with

Schedule 1 Main amendments

1 matters such as conditions of licences and the cancellation of
2 licences.

3 substitute:

- 4 • Part 4 sets out the 2 kinds of licences (general licences and
5 temporary licences) that may be granted and the application
6 process for each. It also deals with matters such as conditions
7 of licences and the cancellation of licences.

8 **5 Subsection 6(1) (paragraphs (a) and (b) of the definition of**
9 ***acceptable tolerance limits*)**

10 Repeal the paragraphs, substitute:

- 11 (a) in relation to cargo authorised to be carried on a vessel under
12 a temporary licence—not more than 200% more, or 100%
13 less, of the volume of cargo authorised to be carried under
14 the licence; or
15 (b) in relation to passengers authorised to be carried on a vessel
16 under a temporary licence—not more than 200% more, or
17 100% less, of the number of passengers authorised to be
18 carried under the licence; or

Comment [A1]: Should remain at 20% more or 20% less

Comment [A2]: Leave passengers as is at 20% more or less

19 **6 Subsection 6(1) (paragraph (c) of the definition of**
20 ***acceptable tolerance limits*)**

21 Omit “5”, substitute “30”.

Comment [A3]: Leave at 5 days for passengers

22 **7 Subsection 6(1)**

23 Insert:

- 24 ***docked for service***: a vessel is ***docked for service*** if:
25 (a) the vessel is in dry dock; or
26 (b) the vessel is:
27 (i) docked for maintenance, repairs, cleaning or painting;
28 and
29 (ii) not undertaking a voyage.

Comment [A4]: Remove this, otherwise foreign ships can just wait to cherry pick the market

30 **8 Subsection 6(1) (definition of *emergency licence*)**

31 Repeal the definition.

Main amendments **Schedule 1**

9 Subsection 6(1) (definition of *energy security situation*)

Repeal the definition.

10 Subsection 6(1)

Insert:

IMO number of a vessel, means the International Maritime
Organization number for the vessel.

11 Subsection 6(1) (definition of *licence*)

Omit “, a temporary licence or an emergency licence”, substitute “or a
temporary licence”.

12 Subsection 6(1)

Insert:

offshore facility has the same meaning as in the *Maritime
Transport and Offshore Facilities Security Act 2003*.

13 Subsection 6(1) (definition of *offshore industry vessel*)

After “activities” insert “(other than coastal trading mentioned in
paragraph 7(1)(d))”.

14 Subsection 6(1) (definition of *port*)

At the end of the definition, add:

Note: See also subsection (3).

15 Subsection 6(1) (definition of *voyage*)

Omit “from one port to another port in a way that would satisfy
paragraph 7(1)(a), (b) or (c)”, substitute “in a way that would satisfy
paragraph 7(1)(a), (b), (c) or (d)”.

Comment [A5]: No ! This opens up the
whole of Australian coastal shipping.
Including Day trips, ferry services, etc. etc.

16 Subsection 6(1A)

Repeal the subsection.

17 At the end of section 6

Add:

Schedule 1 Main amendments

- 1 (3) For the purposes of this Act, a port is taken to be in a State or
2 Territory if the port is connected with a port that is in a State or
3 Territory.

4 **18 At the end of subsection 7(1)**

5 Add:

6 ; or (d) the vessel:

- 7 (i) takes on board cargo that is liquid fuel product from an
8 offshore facility; and
9 (ii) carries the liquid fuel product to a port in a State or
10 Territory where some or all of the liquid fuel product is
11 unloaded.

12 **19 Paragraph 12(2)(a)**

13 After “Territory”, insert “or takes on board cargo that is liquid fuel
14 product at an offshore facility in a State or Territory”.

15 **20 Subparagraph 27(1)(b)(ii)**

16 After “on board”, insert “or the offshore facilities at which cargo that is
17 liquid fuel product was taken on board”.

18 **21 After subsection 28(1)**

19 Insert:

- 20 (1A) A person may apply to the Minister for a temporary licence to
21 enable a vessel to be used to engage in coastal trading over a 65
22 day period in an emergency situation of a kind prescribed by the
23 regulations if the person is:
24 (a) the owner, charterer, master or agent of a vessel; or
25 (b) a shipper.

26 **22 Paragraph 28(2)(a)**

27 Omit “5”, substitute “one”.

Comment [A6]: Not sure about this

28 **23 After paragraph 28(2)(ea)**

29 Insert:

- 30 (eb) the IMO number of the vessel (if known);

Main amendments **Schedule 1**

24 Paragraph 28(2)(f)

After “on board”, insert “or the offshore facilities at which cargo that is liquid fuel product is expected to be taken on board”.

25 After paragraph 28(2)(g)

Insert:

(ga) for an application under subsection (1A)—details of the emergency situation of a kind mentioned in that subsection;

26 Section 30 (heading)

Repeal the heading, substitute:

30 Consultation

27 Section 30

Before “Within”, insert “(1)”.

28 Section 30

Omit “section 28”, substitute “subsection 28(1) that relates to the carriage of passengers or cargo of a kind determined under subsection (2)”.

29 At the end of section 30

Add:

(2) The Minister may, by legislative instrument, determine the following for the purposes of subsection (1):

(a) kinds of passengers;

(b) kinds of cargo.

Comment [A7]: Passengers are passengers

30 Paragraph 34(3)(c)

Omit “5”, substitute “30”.

31 Subsection 34(4)

Repeal the subsection, substitute:

(4) The Minister must decide an application for a temporary licence:

Schedule 1 Main amendments

- 1 (a) if the application is made under subsection 28(1)—within 10
2 business days after the day the application is made; or
3 (b) if the application is made under subsection 28(1A)—within 3
4 business days after the day the application is made.

5 **32 Paragraph 35(1)(a)**

6 Repeal the paragraph, substitute:

- 7 (a) the licence is valid:
8 (i) for an application under subsection 28(1)—for 12
9 months; and
10 (ii) for an application under subsection 28(1A)—for 65
11 days; and

12 **33 Paragraph 35(2)(g)**

13 After “on board”, insert “or the offshore facilities at which cargo that is
14 liquid fuel product will be taken on board”.

15 **34 Section 36**

16 Repeal the section, substitute:

17 **36 Application taken to be granted in certain circumstances**

18 If the Minister has not decided an application by the end of the
19 period within which a decision is required under section 34, then,
20 at the end of the last day of that period, the Minister is taken to
21 have granted the application.

22 **35 Paragraph 37(2)(k)**

23 After “on board”, insert “or the offshore facilities at which cargo that is
24 liquid fuel product is authorised to be taken on board”.

25 **36 Subdivision C of Division 2 of Part 4 (heading)**

26 Repeal the heading, substitute:

27 **Subdivision C—Variation of temporary licences**

28 **37 Section 43 (heading)**

29 Repeal the heading, substitute:

Main amendments **Schedule 1**

1 **43 Application to vary temporary licence**

2 **38 Subsection 43(1)**

3 Repeal the subsection, substitute:

- 4 (1) The holder of a temporary licence that was granted on application
5 under subsection 28(1) may apply to the Minister to vary the
6 licence.

7 **39 Paragraphs 43(2)(b) and (ba)**

8 Repeal the paragraphs, substitute:

- 9 (b) specify how the applicant wishes to vary the licence; and

10 **40 Subsection 43(3)**

11 Repeal the subsection, substitute:

- 12 (3) An application relating to a voyage authorised by a temporary
13 licence may be made at any time before the voyage commences.

Comment [A8]: No, section 61 should apply

14 **41 Subsection 45(1)**

15 Omit “(other than an application relating to an energy security
16 situation)”, substitute “that relates to the carriage of cargo or passengers
17 of a kind determined under subsection 30(2)”.

18 **42 Paragraph 46(2)(b)**

19 Omit “(whether under this Subdivision or Subdivision D of this
20 Division)”.

21 **43 Subsection 46(4)**

22 Repeal the subsection, substitute:

- 23 (4) The Minister must decide an application for variation of a
24 temporary licence within 2 business days after the day the
25 application is made.

26 **44 Section 47A**

27 Repeal the section.

Schedule 1 Main amendments

45 Subdivision D of Division 2 of Part 4

Repeal the Subdivision.

Comment [A9]: No, this should stay or looked at more closely. Perhaps use a scalpel not a machete

46 Section 61

Before “The”, insert “(1)”.

47 After paragraph 61(a)

Insert:

(aa) the IMO number of the vessel;

48 Paragraph 61(e)

After “on board”, insert “or the offshore facilities at which cargo that is liquid fuel product will be taken on board”.

49 At the end of section 61

Add:

(2) Subsection (1) does not apply if the holder of the temporary licence has given the information required by that subsection to the Minister when applying for the licence under section 28, or for a variation to the licence under section 43.

50 After paragraph 62(1)(a)

Insert:

(aa) the IMO number of the vessel;

51 Subparagraph 62(1)(d)(iii)

After “on board”, insert “or the offshore facilities at which cargo that is liquid fuel product was taken on board”.

52 Paragraph 63(1)(c)

After “on board”, insert “or the offshore facilities at which cargo that is liquid fuel product is taken on board”.

53 Paragraph 63(1)(e)

Omit “under Subdivision C or D of this Division”.

Main amendments **Schedule 1**

1 **54 Division 3 of Part 4**

2 Repeal the Division.

3 **55 Section 76 (heading)**

4 Repeal the heading, substitute:

5 **76 Requests for further information—general licence applications**

6 **56 Subsection 76(1)**

7 Omit “or 64”.

8 **57 Subsection 76(3)**

9 Omit “or 66, as applicable,”.

10 **58 Subsection 77(1)**

11 Omit “51”, substitute “43”.

12 **59 A reviewed copy of the**

13 Omit “54(1)”, substitute “46(4)”.

Comment [A10]: No, Leave it 54(1)
stays at 7 days not 2

14 **60 Paragraph 78(a)**

15 Omit “41 or 73, respectively”, substitute “or 41, as applicable”.

16 **61 Subsection 107(3)**

17 Omit “51”, substitute “43”.

18 **62 Subsection 107(3)**

19 Omit “58”, substitute “49”.

20 **63 Subsection 107(5)**

21 Repeal the subsection, substitute:

22 (5) The holder of a general licence who gave the Minister a notice in
23 response to an application for a variation of a temporary licence
24 under section 43 may apply to the Administrative Appeals Tribunal
25 for review of a decision by the Minister to grant the application
26 under section 47.

Schedule 1 Main amendments

64 Section 112

Repeal the section, substitute:

112 Customs treatment of certain vessels

A vessel is not imported into Australia for the purposes of the *Customs Act 1901* only because:

- (a) it is used to carry passengers or cargo under a temporary licence; or
- (b) it is docked for service while a temporary licence is in force that enables the vessel to engage in coastal trading.

65 Application of amendments

- (1) The amendments made by this Schedule apply in relation to a licence that was issued before, on or after the commencement of this item.
- (2) The amendments made by this Schedule apply in relation to an application for a licence made under section 28 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* that was pending immediately before the commencement of this item.
- (3) The amendments made by this Schedule apply in relation to an application made on or after the commencement of this item for a variation of a licence whether the licence was granted before, on or after that commencement.
- (4) An application for a variation made under section 43 or 51 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* that was pending immediately before the commencement of this item is taken, after that time, to be an application made under section 43 of that Act as amended by this Schedule.
- (5) An application under section 64 of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* that was pending immediately before the commencement of this item is taken, after that time, to be an application made under subsection 28(1A) of that Act as inserted by this Schedule.

Main amendments **Schedule 1**

-
- 1 **66 Transitional provision**
2 Despite the repeal of Division 3 of Part 4 of the *Coastal Trading*
3 (*Revitalising Australian Shipping*) Act 2012 by this Schedule, that
4 Division continues to apply to an emergency licence that was in force
5 immediately before the commencement of this item as if that repeal had
6 not happened.

Schedule 2 Consequential amendments

Schedule 2—Consequential amendments

***Occupational Health and Safety (Maritime Industry) Act
1993***

1 Section 4 (definition of *emergency licence*)

Repeal the definition.

2 Paragraph 6(3A)(b)

Omit “Register; and”, substitute “Register.”.

3 Paragraph 6(3A)(c)

Repeal the paragraph.

Seafarers Rehabilitation and Compensation Act 1992

4 Section 3 (definition of *emergency licence*)

Repeal the definition.

5 Subsection 19(1AA)

Repeal the subsection, substitute:

(1AA) This Act also applies to the employment of employees on a vessel that is used to engage in coastal trading under a general licence.

6 Transitional provision

Despite the repeal of provisions of the *Occupational Health and Safety (Maritime Industry) Act 1993* and the *Seafarers Rehabilitation and Compensation Act 1992* by this Schedule, those provisions continue to apply to an emergency licence that was in force immediately before the commencement of this item as if those repeals had not happened.